[redacted] Legal Control of Environmental Crimes with Special Reference to [redacted] Wildlife and Forests.

SYNOPSIS OF THE THESIS

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1. Introduction

Mother Earth is the source of life. Its distance from the Sun, its rotation and revolution, its ozone covering, its combination of Lithosphere, Atmosphere and Hydrosphere make possible the survival of life on it. With the passage of time many forms of life evolve on it but birth of the weakest instead the most intelligent being changed the whole philosophy of the Mother Earth through its intervention and invention. the unstoppable exploitation of resources can be stopped by the state's protection, many example of it we can find in: Vedas-, Ashoka's Rock edicts-, in modern time the Constitution & many legislation-, many conventions internationally- are some engraved efforts to save the life on Earth. Earlier, fines were the only punishment but gradually its grave nature and deep impact on life, changes the perception regarding punishment, now in many countries, harm to environment considered as crime. "Environmental Crime" in general sense is crime against Environment.

Environmental crime has impacts beyond those posed by regular criminality. It increases the fragility of an already brittle planet. The resulting vast losses to our planet rob future generations of wealth, health and wellbeing on an unprecedented scale. They also compromise our ability to achieve the Sustainable Development Goals.

The expression "Crime" is commission of an act forbidden or prohibited by law and subjects the doer to punishment.[1] It has not been defined in the Indian Penal

Code,1860 (it defined the word 'Offence' u/s 40). Some scholars have attempted to do that: **Sir William Blackstone**- an act committed or omitted in violation of public law forbidding or commanding it. **Professor Goodheart**- any act which is punished by the State. From different definitions some common **elements** which are necessary to constitute a Crime and without any of it there will be no crime, are: Human Being, Mens Rea, Actus Reus and Injury. **Stages of the Crime**: Intention, Preparation, Attempt and Act(Crime). Now we can say that on completion of all stages with all the element crime is committed.

Environment simply means surroundings. Natural environment can be classified into two divisions: Firstly. The Physical Environment, which includes non-living things, such as land, air, water; and secondly The Biological Environment, which include all life forms including the plants, animals and other living organisms. S.2(a) of the Environment Protection Act, 1986 defined the word: *it include water, air and land and inter-relationship which exist among and between water, air and land, and human being, other living creatures, plants, micro-organisms and property.*

Environmental Crime is the new and the "wildlife and the forestry crime" is the newest branch of the Criminal Jurisprudence, **The United Nation Conference on Human Environment** (The Stockholm Conference1972) is regarded as the watershed in field of environment legal regime at international and national level. Environmental Crime can be broadly defined as illegal trade in wildlife, smuggling of ozone depleting substance, illicit trade in hazardous waste; illegal, unregulated and unrecognized fishing; and illegal logging and the association trade in stolen timber. Illegal wildlife trade and environmental crime involve a wide range of flora and fauna across all continents,

estimated to be worth USD 70–213 billion annually. This compares to a global official development assistance envelope of about 135 billion USD per annum. The illegal trade in natural resources is depriving developing economies of billions of dollars in lost revenues and lost development opportunities, while benefiting a relatively small criminal fraternity.[2] The growth rate of these crimes is astonishing. Various reports reveals that this new area of criminality has diversified and skyrocketed to become the world's fourth largest crime sector in a few decades, growing at 2-3 times the pace of the global economy.

(i) Types of Environmental Crime: Air pollution, Water pollution, Land pollution, Waste problem, Environment pollution and Wildlife and Forest crime.Among all these crime against wildlife and forestry has the deepest and the very harmful impact which will be beyond control. S.26 of the Indian Forest Act 1927 and various sections of Wildlife protection Act, 1972 defined the different types of crime.

- Causes:

(i) Three Ps i.e. Population, Poverty and Pollution are the root cause of major environmental harms. Increasing density of humans need more natural resources for their survival and livelihood. Poverty and Pollution are the byproducts of the Population which not only taken away our right to live in a clean environment but it bring the species to extinction and expose them to many hidden environmental danger, like Ozone depletion

(ii) Industrialization

(iii) Corruption among official

[2] Interpol Report, Environment Crime(2016)

(iv) Demand in International market

(v) Penal Investigation procedures are very poor and no synchronizations among nations regarding laws and procedure.

(vi) High profit Low risk.

(vii) Porous Boarder

(viii) Soft law.

- Major Impact:

(i) Undermine Rule of Law and Good governance

(ii) Become a Organized Crime and widespread criminal activity, involving transnational networks

(iii) Undermine Sustainable Development Goals

(iv) Threat to Endangered species.

(v) Environment Migration.

(vi) Link of Environmental criminals and Terrorism.

(vii) Loss of revenue and natural resource to the States.

- Actions :

(i) Eradicate the market for Illegal wildlife product

(ii) Ensuring effective legal framework and deterrents

(iii) Strengthening law enforcement agencies.

(iv) Top-Down(in legislation) and Down-Top approach(in implementation)

(v) Uniform legal system for the whole world.

- Approach:

Multidimensional approach is needed to tackle the menace at International, National and Regional level. Trickle down approach must be adopted while making policies and legislation; and bottom-up approach for implementation. At national level enforcement authorities must be strong with sanctioning powers.

2. Objectives.

The main objective of the study are:

1. To overview Environmental Crimes in India.
2. To examine comparative legal control of Wildlife and Forest Crime of India with respect to China, United State of America, Europe and South Africa
3. To critically examine the approach Criminal Justice System towards Wildlife and Forest Crime.
4. To analyze public international law to combat Wildlife and Forest Crime.

5. Literature Survey.

This research is aimed at deep review of the existing literature on the subject. Many newspapers, journals, reports, magazines and websites are consulted. Some of important books and Journals relating to this subject are mentioned here:

Papers:

(i) **Fighting forest crime and promoting prudent banking for sustainable forest management: The anti money laundering approach(2015). Bambang Sectiono and Yunus Hudein. Occational Paper No.44**

This occasional paper mentioned how private international financial institutions have played a critical role in log trade. The current forestry law enforcement approach fails to capture the masterminds of illegal logging. However, the money laundering law enforcement approach which 'follow the money' provide an important option to deal with the masterminds of the illegal logging.

(ii) **Skinning the Cat: Crime and Politics of the Big Cat Skin Trade. Report of Environmental Investigating Agency.(2006)**

The report mentioned that wildlife crime remains in low priority in terms of political commitments and investment while the United Nation recognized it as a transnational organized crime of a serious nature, with significant negative economic and social implications. This investigative report mainly covers the Trans Himalayan Region

(iii) The Illegal Wildlife Trade, London Declaration(2014)

Nineteen point declaration which discuss the major consequences of the wildlife crime and provide the multidimensional action plan to combat with it. Universalisation of legal framework is a requirement with zero tolerance policy for such crime and before the clear specific named definition of such crime must declare as "serious crime"- within the United Nations Convention against Transnational Organized Crime, as called by Resolution 2013/40 of the United Nations Economic and Social Council.

(iv) Strategic Mission[ICCWC], 2014-16

This report outlined a program for combating Wildlife and Forest Crime for defined period. It considered the crime a lucrative criminal activity and involvement of transnational organized criminal in it has changed the dynamics of combating it. It is not only a threat to natural resource but it would a cause for extinction through climate change, as up to $1/5^{th}$ of greenhouse gas emission stem from deforestation.

(v) Assessment of Law Enforcement Capacity needs to tackle Forest Crime(2013), INTERPOLE, Project Leaf.

This Assessment point out clearly Forest Crime as a significant and growing problem that undermining government policies to sustainably manage and protect forest.

(vi) World Wildlife Crime Report: Trafficking in protected spices", UNDC(2016).

The report emphasis the universalisation of the legal regime of Environmental Legislation.

(vii) **"Illegal Wildlife Trade in Nepal: a case study from Kathmandu Valley" Buddhi Ratan Dangol(2015)**

The paper provide the first hand data of Nepal: with underneath problems like forest officials behave like Quasi-judge which hinders the actual legal procedural system, lack of uniformity I punishment, biased justice system.

(viii) **"Transnational Environmental Crime- a common crime in need of better enforcement" UNEP(2012)**

The report investigated the linkage of the environmental crime and corruption at different level in different countries.

(ix) **What sustain wildlife crime? Rhino horn trading and the resilience of criminal networks" Julei Ayling(2012)**

The working paper discussed the well organized network of organized transnational environment criminals which s the reason for its resilient character.

(x) **" An illusion of Complicity: Terrorism and Illegal Ivory Trade in East Africa" Tom Maguire and Cathy Haenlein(2015)**

The occasional paper outlined the nexus between wildlife crime and terrorism. Al Shabab, the Somali Islamist terrorist group's involvement with the ivory trade for its fund requirement, not only a threat to the wildlife crime or species extinction but it undermine the Good Governance, the Rue of Law and Security. And above all hampers the goal of Sustainable Development.

(xi)"Wildlife trafficking in the Internet Age" Anita Lavorga(2014)

This paper discussed the new approach adopt by the environmental criminal in this Internet world to expand their illegal market.

(xii) "Adaptive resource allocation for wildlife protection against illegal poachers" Rong Yang, Benjamin Ford, Milind Tambe, Andrew Lemeiux(2014)

Their paper emphasis the usage of empirical statistical data for wildlife crime analysis.

(xiii) "The protection of wildlife by combating its illegal trade" Peter Kent(2014)

This Council Member paper point out the key problems like high consumer demand and inadequate legal framework to tackle the issue is a major motor to drive it successfully.

(xiv) "Repainting the thin line: the enforcement of UK wildlife law" Dr. Angus Nurse(2012)

This paper discussed the historical aspect of the wildlife legislation with the current position and why it need to be change with more punitive regime.

(xv) "International Illegal Trade in Wildlife: Treat and U.S. Policy" Liana Sun Wyler and Pervaze A. Sheikh(2013)

Their paper discussed a broad range of international and U.S. policy response and suggest the feasible flexible legislative reforms.

(xvi) **"Wildlife conservation strategies and management in India: An overview" Swarndeep S. Hundal.**

The paper refer the wildlife resource management constitute the vital link in the survival of the human species and as India is rich in its biodiversity, to conserve it, many sectoral programs needed.

(xvii) **"Environment Law as 'Hot' Law", Elizabeth Fisher(2013)**

This paper try to carve out the different issues of the Environmental Law. It is multidisciplinary issue and no single thought approach will solve the problem. Framing the issue under legal regime itself an issue. 'Hot' makes clear that many environmental law issues are not just 'controversial' but that the controversies are structural and foundational. The creation of a solid frame for the subject in which interests, rights, responsibilities and overflows can be identified and managed. It not only search and identify the possible frames and their strength but weaknesses also. The environmental law landscape must include the domestic problem as well as the international issues(climate change, environmental migration, species extinction, terrorism etc.)

(xviii) **"Judicial Policy Lines in the Criminal Sanctioning of Environmental Offences: An Empirical Study" Carole M. Billet, Thomas Blondiau(Nov. 2011)**

This empirical study of Europe(Flander, Belgium) clearly point out the judicial decision making for environmental crime sanctioning which is often treated as black-box. It shows how judicial system responds at different level towards the environment and offenders. It provides the first hand data which is useful to show the actual behavior of system in response to environmental crime.

(xix) "The Use of Restorative Justice for Environmental Crime", Hon Justice Brian J Preston(2011)

This study shows how through holistic approach (restorative justice) a balance can be achieved among the victims, community and the offender in environmental prosecution with its different forms like integrated, alternative or additional restorative justice.

(xx) "Environmental Crime Comes of Age The Evolution of Criminal Enforcement In The Environmental Regulatory Scheme" David M. Uhlmann(2011)

This paper outlined the historical approach of Environmental legislation of United State of America from penalty to penal sanction. From Mental State Requirement doctrine to the concept like the void-for-vagueness doctrine and rule of lenity this study try to dived the environmental violation into four categories that may be appropriate for criminal sanction.

(xxi) "Environmental Crime", Michael Faure(http://ssrn.com/abstract=1498471)

This study helps to understand why environmental crime should not only be considered a civil wrong, but it must included in the arena of criminal prosecution. Since civil wrong in principle only force the injurer to compensate the victim for the amount of damage suffered and no more; and often not be useful as deterrent. On the other hand environmental crime is different from the traditional criminal law, it is mainly of administrative nature.

Books:

- **R.V.Kelkar.*Criminal Procedure* Vth Edition, 2012. Revised by Dr KN Chandrasekharan Pillai:**

  Nuisance is the initial environmental crime which got the place in criminal jurisprudence in Indi, under the heading 'Maintenance of Public Order and Tranquility(ss 129-148)

- **Ritwik Dutta, *Supreme Court on Forest Conservation*.** IIIrd Edition(2015)

  This book clearly outline the procedural progress of the leading *Godavarman Case* with the continuous mandamus, it is the single largest intervention by the court in the environmental matter. It deals with the close link between forest, wildlife and the environmental clearance.

- **P. Leelakrishnan ,*Environmental Law in India*. IInd Edition(2010)**

  It carve out the International effort for the protection and preservation of the global environment from Stockholm Conference in 1972, and Indian environment protection laws. Judicial verdicts on the issue played a seminal role and used Public Interest Litigation as a convenient tool to create a new environmental jurisprudence. It also strike a balance between Development and Sustainable development.

- **Prof. M. P. Jain. *Indian Constitutional Law* Vth Edition Reprint, 2012. Lexis Nexis:**

  The nexus between *Right to life and the clean environment* through many Supreme Court Judgment clearly comes out that the biodiversity and pristine nature is a requirement for the healthy survival of human being.

- **Geetanjoy Sahu ,*Environmental Jurisprudence and the Supreme Court* 2014, Tata Institute of Social Sciencest**

  It critically point out the Supreme Courts judgments in the *sense shades of greenness*, many a times the grey area emerge. The implementation of the judgments not so effective in practical reality due to ineffective political will.

- **Aldo Leopold, *Wildlife Conservation and Management:***

  This work depict how to manage our natural resources in this topsy-turvy world on the issue.

- **Najmul Arif, *International Environmental* Law III[rd] Edition:**

  It is compilation of many international conventions on environmental protection.

- **Dr. H.N. Tiwari *Environmental Law*, V[th] Edition, 2013-Allahbad Law Agency.**

  This work outlined the India's Constitutional, Legislative, Judicial and Administrative approach to environmental law in general with the latest case laws. It incorporated different steps taken by the international community at the international level to mitigate the environmental harm with the Development.

- **Rattan Singh, *Legal Research Methodology*, 1st Edition Reprint, 2014, Lexis Nexis**

The book clearly defines and explains the different stages of research for qualitative and quantitative methods of data collection and provide a right direction to pursue the research with its analytical approach to the methodology for the work.

- **Romina Picolotti and Jorge Daniel Taillant, *Linking Human Right and the Environment*, 2013. The University of Arizona Press, Arozona:**

It is a collection of thoughts in the increasing overlapping areas of human rights and environmental protection, as a catalyst. Growing cases of human right violations resulting from environmental degradation, people must know their rights, understand the evolving legal framework and able to defend themselves.

- **P. Leelakrishnan, *Environmental Law Case Book*, IInd Edition, 2006. Lexis Nexis:**

This book touches very corner of the legal framework of India regarding Environmental Law – the Constitutional safeguards through fundamental right under Article 21, Directive Principles or Fundamental Duties; Civil Wrongs to Criminal understanding of Environmental Crime with the latest case laws. It briefly covers the present Constitutional, Legislative, Procedural and Administrative scenario of environmental protection legal measures of India.

6. Research Methodology

While writing the thesis, preference is the theoretical understanding of the topic. That the legal aspect of the handling Wildlife and Forest Crime through the analysis of different Acts, Rules, Regulations, Treaties, Judgments, Reports etc.. Comparative approach helps to determine the legal and procedural issues in combating the crime in India, China, USA and Africa; and the country which become a hotspot for the crime. The research helps to, examine how positive and negative the legal framework of the India and other on the topic, which engulf the balance of the nature on the Earth and formulate the proposal for the improvement of legal framework of Indian Legislation.

7. Limitations of Study.

As it is a doctrinal study so first hand data would not be available for the research. The dependency on the secondary data limits the actual position regarding the issue at practical level like:

- How many environmental crime reported by the agency.
- What is the rate of prosecution and at which level of justice system etc.

8. Tentative Chapterization

The proposed study is to be divided in the following chapters:

I. Introduction.

II. Legal Control of Wildlife and Forest Crime in India.

III. Comparative Study of legal control of Wildlife and Forest Crime with respect to China, United State of America, Europe and Africa.

IV. Criminal Justice System of India and Wildlife & Forest Crime.

V. Legal control of public international law for the protection of Wildlife and Forest Crime.

VI. Conclusion and suggestion.

9. References:

Books:

- P. Leelakrishnan ,*Environmental Law in India*. III[rd] Edition, India.
- Prof. M. P. Jain. *Indian Constitutional Law* V[th] Edition Reprint, 2012. Lexis Nexis. India
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- Ritwik Dutta, *Supreme Court on Forest Conservation, V [th] Edition* India.
- Charlotte Ku and Paul F. Diehl, *International Law: classic and contemporary reading*
- Geetanjoy Sahu ,*Environmental Jurisprudence and the Supreme Court* 2014, Tata Institute of Social Sciences, Hydrabad, India.
- Aldo Leopold,*Wildlife Conservation and Management,India*
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- P. Leelakrishnan, *Environmental Law Case Book*, II[nd] Edition, 2006. Lexis Nexis. India
- Dr. R.G. Chaturvedi, *Ancient Law of Environment* 2010. Universal law Publication. India.
- C.K. Takwani, *Lecture on Administrative Law*, IV[th] Edition Eastern Book Company. India.
- PSA Pillai ,*Criminal Law*, IX[th] Edition, 2007.

Paper/Articles/Journals

- *National green tribunal International journal On environment* Vol. 1 of 2014
- Jody **Freeman and** Daniel A. **Farber**, Modular environmental regulation *Duke Law Journal* ,February, 2005
- Environmental crime, sanctioning strategies and sustainable development *Publication No.* 5 0Rome / Canberra November 1993
- Arindam Basu, Climate Change Litigation In India: Seeking a New Approach through the Application of Common Law Principles, *Environmental Law & Practice Review*. Vol: 1: pg. 34-50.

Thesis

Sharmila Moitr, " Environmental Protection Movement in the United State and India: A Select Comparative Case Study", Ph.D Thesis, Center for American and West-European Studies, JNU. New Delhi.

Acts

- The Environmental (Protection) Act, 1986
- Water (Prevention and Control of Pollution) Act, 1981
- Air (Prevention and Control of Pollution) Act, 1981
- The Forest (Conservation) Act, 1980
- The Wildlife (Protection) Act, 1072

Web links:

- http://www.worldwildlife.org/pages/stop-wildlife-crime
- https://www.cites.org/eng/prog/iccwc.php/Wildlife-Crime
- https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf
- https://www.unodc.org/unodc/en/frontpage/2016/May/wildlife-crime-assessed-globally-for-the-first-time-in-new-unodc-report.html
- http://www.unodc.org/documents/Wildlife/Timber_Flow_Diagram.pdf
- http://wildlifecrimeinindia.blogspot.in/
- http://www.unodc.org/documents/Wildlife/Corruption_Wildlife_Crime.pdf
- http://www.terijuniversity.ac.in/mct/pdf/assignment/ANNIGERI.pdf
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- https://cites.org/eng/iccwc_crime_congress_2015
- http://www.unodc.org/documents/congress/Documentation/ACONF222_L6_e_V1502120.pdf
- https://unchronicle.un.org/article/how-wildlife-and-forest-crime-undermines-development-and-ravages-global-biodiversity
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- 186th Report of Law Commission of India on *Proposal to Constitute Environmental Court().*
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- *Subhash Kumar v. State of Bihar (AIR 1991 SC)*
- *Tehri Bandh Virodhi Sangh Samiti v. State of Uttar Pradesh (1992)1 Spp SCC 44*
- *Center for Environmental Law, WWF India v. Union of India, (W.P.(C) No 337 1995)*
- *A.Chowgule v. Goa Foundation,(2008)12 SCC 646.*